IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
September 24, 2008 Session

STATE OF TENNESSEE v. LILLIE M. CHAPMAN

Appeal from the Criminal Court for Campbell County
Nos. 13286, 13287, 13289 E. Shayne Sexton, Judge

No. E2007-02294-CCA-R3-CD - Filed May 7, 2009

The defendant, Lillie M. Chapman, pled guilty to two counts of false reports of a bomb, a Class C felony; two counts of reckless endangerment, a Class E felony; one count of reckless endangerment, a Class A misdemeanor; one count of unlawful possession of a weapon, a Class A misdemeanor; and one count of possession of a prohibited weapon, a Class A misdemeanor. The trial court imposed two consecutive six-year sentences to be served in the Department of Correction for the false reports convictions, two concurrent two-year sentences for the felony reckless endangerment convictions to be served consecutively to the two false reports sentences, and three sentences of eleven months and twenty-nine days for the misdemeanors to be served concurrently to each other and to the felony sentences for an effective sentence of fourteen years. On appeal, the defendant contends (1) that the trial court erred in imposing consecutive sentences because the circumstances of the false reports were not aggravated and the length of the extended confinement does not reasonably relate to the underlying offenses and (2) that the trial court did not fully consider all the circumstances of the offenses, specifically the defendant's disturbed emotional state during the time of the offenses, in concluding that the circumstances of the offenses justified denial of an alternative sentence. In view of the defendant's failure to include the transcript of the guilty plea hearing in the appellate record, we affirm the judgments of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgments of the Criminal Court Affirmed

JOSEPH M. TIPTON, P.J., delivered the opinion of the court, in which DAVID H. WELLES and JERRY L. SMITH, JJ., joined.

Robert W. Scott, Jacksboro, Tennessee, for the appellant, Lillie M. Chapman.

Robert E. Cooper, Jr., Attorney General and Reporter; Deshea Dulany, Assistant Attorney General; William Paul Phillips, District Attorney General; and Michael Olin Ripley and Scarlett Wynne Ellis, Assistant District Attorneys General, for the appellee, State of Tennessee.

OPINION

We take the following facts from the presentence report included in the appellate record. On September 12, 2006, the defendant called the Campbell County Jail saying that she had C-4 explosives and that she was going to blow herself up and hurt someone. She also asked to speak with Officer Mike Starrett, who returned her phone call. She reiterated her claims. The police department informed the bomb squad, and Officer Starrett and Officer Don Powell went to the defendant's residence to check on the defendant. The defendant was not at home, and shortly thereafter, Officer Powell saw a car being driven by a woman who matched the defendant's description. The two officers pursued and attempted to stop the defendant's car. The defendant stopped her car but shifted into reverse and attempted to ram the squad car. She did not hit the car. She accelerated and drove in the middle of the road, and another car had to swerve onto the shoulder to avoid being hit by the defendant. She eventually turned around and rammed the squad car, "pushing it across the roadway and disabl[ing] the patrol unit by pushing the fen[d]er into the tire." The defendant fled, but the police received a 9-1-1 call approximately half an hour later stating the defendant had driven her car into a ditch. Officer Starrett and Officer Mongar[1] responded and found the car. The defendant was "slumped down in the seat" but raised herself, restarted the vehicle, and unsuccessfully attempted to drive the car out of the ditch. The officers drew their weapons and ordered the defendant to raise her hands, and the defendant complied. Officer Starrett opened the car door and, when he saw a rifle lying in the defendant's lap, grabbed her hands. The officers pulled the defendant from the car, placed her on the ground, and handcuffed her. The gun was an unloaded .22 caliber rifle. The defendant kicked out the back glass of the squad car and was taken to the emergency room for treatment.

On January 2, 2007, a Jacksboro police officer saw the defendant driving when the officer knew the defendant's license had been suspended. The officer turned on his blue lights and attempted to stop the defendant, who did not pull over, "forced vehicles off the roadway," and did not stop at a stop sign. At some point, the defendant was stopped by Officer Starrett, who saw brass knuckles in the defendant's car. She did not have car insurance, and she "caused great concern to Officer Starrett and was disorderly."

On February 7, 2007, the defendant called Campbell County Sheriff's Officer Richard Foschino to tell him that in seven minutes, she was going to detonate a bomb at the local high school. On February 8, 2007, four officers went to the defendant's house to arrest the defendant for falsely reporting a bomb. The defendant stated she knew she was going to be arrested and brandished a gun at the officers. She refused to surrender the weapon or herself. After two hours and the use of a police dog, the defendant was arrested. When she was arrested, the defendant informed the officers that she had called Jacksboro Middle School and said that a bomb was going to go off there. The middle school was evacuated.

At the sentencing hearing, Jamie Wheeler, the principal of Jacksboro Middle School, testified that she was working lunch duty the day when the defendant's bomb threat was received at 11:15

[1] No first name was given.

a.m. She said that she was called to the office and that she called 9-1-1 and the school system's central office. She said that the school's 525 pupils were ages twelve to fourteen. She said that the school was evacuated, that everyone went at first to the school's football field, and that from there, the students and school personnel crossed a four-lane highway to a nearby church. She said that it was cold outside and that children who did not have their coats with them in the lunchroom or classrooms were not allowed to retrieve them before evacuating the building. She said lunches had to be obtained from other schools to feed the students at the church and that the prepared lunch for that day could not be served.

Ms. Wheeler testified that the school system informed the children's parents through radio and television that their children were at the church. She said that although many parents picked up their children at the church, school buses were rerouted to the church for the rest. She said that she and the other school officials had to ensure that each child left with a proper adult, a process that caused parents to have to wait approximately half an hour to one hour before they could take their children home. She said that the last child left the church between 3:30 p.m. and 4:00 p.m. She stated that she wanted the court to know that the bomb threat put many students at risk. She said the school was fortunate that no one was injured during the evacuation, particularly when crossing the highway. She said "there was a lot of cost to the evacuation," including the wasted lunch and its replacement.

The defendant testified that at the time she made two bomb threats to schools, she had recently learned that her sister-in-law had been diagnosed with cancer. She testified that another sister had overdosed and died, as well. She said "no" when asked if she had been in her "right mind." She claimed she had no intent to hurt anyone during any of the three false reports of a bomb. She stated she was not under the influence of any drugs or alcohol at the time she made these false reports. She said that she was "talking to people" and apparently receiving counseling and treatment. She said that she was sorry for the bomb threats and that she did not realize the effects of the calls when she made them. She claimed she would pass a drug test if administered at that time. She said she used to be on prescription medication, but she then admitted that she was on Paxil and Trimodal at the time of the hearing. She said she would meet with a probation officer and pay restitution if she were granted alternative sentencing.

On cross-examination, the defendant testified that she was upset when she made the two bomb threats to the schools in February 2007. She claimed she was upset about her sister's cancer diagnosis a few days before she threatened the school. She claimed she could not remember what stress existed in September 2006 when she called the jail saying she was going to blow up herself. She said it was "a lot of stuff building up," including that her niece in Alabama had been having mental health problems. She agreed that she had asked to speak to Officer Starrett in that telephone call, that she fled from him in her car, and that she hit his patrol car and then fled again. She admitted that when the police caught her she a rifle in her lap. She said the police currently had all her weapons. She stated that she did not currently have explosives. She claimed that another sister had died from an overdose and that her funeral had taken place shortly before the day she fled the police. She admitted that the police had turned on their blue lights and were pursuing her for driving on a suspended license, that she refused to stop, and that she was apprehended with brass knuckles in her car. She stated she had not received any bad news since February 2007. She said she had two

children, ages nineteen and seventeen, one of whom was a student at the high school where she telephoned the bomb threat. She claimed not to know if he had been at school that day.

At the sentencing hearing, the trial court found that the following enhancement factors from Tennessee Code Annotated section 40-35-114 (2006) applied:

> (1) The defendant has a previous history of criminal convictions or criminal behavior, in addition to those necessary to establish the appropriate range;
> (3) The offense involved more than one (1) victim;
> (10) The defendant had no hesitation about committing a crime when the risk to human life was high; [and]
> (15) The defendant committed the offense on the grounds or facilities of a pre-kindergarten (pre-K) through grade twelve (12) public or private institution of learning when minors were present[.]

The trial court found that factor (4) did not apply because there was no showing of particular vulnerability of the students involved. See T.C.A. § 40-35-114(4). The trial court found that no mitigating factors applied. See T.C.A. § 40-35-113 (2006). Although the trial court found that the defendant did not have a long history of criminal conduct and that there was no proof in the record showing whether the defendant successfully completed her two-year supervised probation for her conviction of attempt to obtain drugs by fraud, the trial court found that confinement was necessary to avoid depreciating the seriousness of the offense. See T.C.A. § 40-35-103(1)(A)-(C) (2006).

The trial court found that the defendant was "a dangerous offender whose behavior indicates little or no regard for human life, and no hesitation about committing a crime in which the risk to human life is high[.]" T.C.A. § 40-35-115(b)(4) (2006). The trial court found that extended confinement was necessary to protect society from the defendant's "unwillingness to lead a productive life and the defendant's resort to criminal activity in furtherance of an anti-social lifestyle." The court then stated that the length of the sentences was reasonably related to the offenses for which she was convicted. The trial court also found that the circumstances surrounding the commission of the offense were "aggravated."

The trial court imposed two consecutive six-year sentences to be served in the Department of Correction for the false reports convictions, two concurrent two-year sentences for the felony reckless endangerment convictions to be served consecutively to the two false reports sentences, and three sentences of eleven months and twenty-nine days for the misdemeanors to be served concurrently to each other and to the felony sentences. The trial court dismissed several counts.

The defendant contends that the trial court erred in imposing consecutive sentences because the circumstances of the false reports were not aggravated and the length of confinement does not reasonably relate to the underlying offenses. She relies on State v. Gray, 538 S.W.2d 391, 393-94 (Tenn. 1976), to argue making false reports is not an inherently dangerous crime that presents a high

risk to human life, and she claims that the crime's foreseeable "potential for chaos" does not necessarily constitute an inherently dangerous offense.

The State responds that the sentences should be affirmed because the trial court followed the statutory sentencing procedure. The trial court found that the defendant was a dangerous offender whose behavior indicates little or no regard for human life and no hesitation about committing a crime when the risk to human life was high. The trial court found that extended confinement was necessary to protect society from the defendant and that the sentences' length reasonably related to the severity of the offenses pursuant to State v. Wilkerson, 905 S.W.2d 933, 938 (Tenn. 1995).

"A sentence must be based on evidence in the record of the trial . . . ." T.C.A. § 40-35-210(f) (2006). In the present cases, the defendant pled guilty. On appeal, she had "a duty to prepare a record which conveys a fair, accurate and complete account of what transpired with respect to the issues forming the basis of the appeal." State v. Ballard, 855 S.W.2d 557, 560 (Tenn. 1993) (citing State v. Bunch, 646 S.W.2d 158, 160 (Tenn. 1983)). Although the defendant appeals her sentences, particularly the imposition of consecutive sentences after the trial court found that she was a dangerous offender and that the circumstances of the offenses were "aggravated," the record does not contain the transcript from the guilty plea hearing. "Where the record is incomplete and does not contain a transcript of the proceedings relevant to an issue presented for review, or portions of the record upon which the party relies, an appellate court is precluded from considering the issue." State v. Ballard, 855 S.W.2d at 560-61 (citing State v. Roberts, 755 S.W.2d 833, 836 (Tenn. Crim. App. 1988)). We have no way of knowing what evidence, if any, was presented at the plea hearing, and we are foreclosed from the de novo review we are required to make. We must presume the trial court's sentencing determinations and application of law to the facts were correct. See State v. Roberts, 755 S.W.2d at 836 (citations omitted); State v. Oody, 823 S.W.2d 554, 559 (Tenn. Crim. App. 1991). The defendant is not entitled to relief.

Based on the foregoing and the record as a whole, we affirm the judgments of the trial court.

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JOSEPH M. TIPTON, PRESIDING JUDGE